

1 HELANE L. MORRISON (Bar No. 127752)
2 CARY S. ROBNETT (Bar No. 160585)
3 PATRICK T. MURPHY (NY Bar No. 2685717)
4 CAROLYN SAMIERE (Bar No. 118353)

5 Attorneys for Plaintiff
6 SECURITIES AND EXCHANGE COMMISSION
7 44 Montgomery Street, Suite 2600
8 San Francisco, California 94104
9 Telephone: (415) 705-2500
10 Facsimile: (415) 705-2331

E-Filing

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 vs.

16 DIANE KAYSER,

17 Defendant.

Civil Action No.

**[PROPOSED] FINAL JUDGMENT
OF PERMANENT INJUNCTION
AND OTHER RELIEF AGAINST
DEFENDANT DIANE KAYSER**

18 Plaintiff United States Securities and Exchange Commission ("Commission") has filed its
19 Complaint for Permanent Injunction and Other Relief ("Complaint") in this action. Defendant Diane
20 Kayser ("Defendant"), who was represented by counsel, has submitted the Consent of Defendant Diane
21 Kayser to Entry of Final Judgment of Permanent Injunction and Other Relief ("Consent"), which was
22 filed simultaneously with this [Proposed] Final Judgment of Permanent Injunction and Other Relief
23 Against Defendant Diane Kayser ("Final Judgment") and incorporated herein by reference. In the
24 Consent, Kayser waived service of the Summons and the Complaint, admitted the jurisdiction of this
25 Court over her and over the subject matter of this action, admitted that she was fully advised and
26 informed of the right to a judicial determination of this matter, waived findings of fact and conclusions
27 of law as provided by Rule 52 of the Federal Rules of Civil Procedure, consented to the entry of this
28

**[Proposed] FINAL JUDGEMENT OF
PERMANENT INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT DIANE KAYSER**

1 Final Judgment, without admitting or denying any of the allegations in the Complaint except as set forth
2 in the Consent, and waived notice of hearing upon the entry of this Final Judgment. The Court, being
3 fully advised, orders as follows:

4 I.

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant and her agents,
6 servants, employees, attorneys, and all persons in active concert or participation with any of them,
7 who receive actual notice of this Final Judgment by personal service or otherwise are permanently
8 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
9 Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated
10 thereunder [17 C.F.R. § 240.10b-5] by using any means or instrumentality of interstate commerce, or
11 of the mails, or of any facility of any national securities exchange, in connection with the purchase or
12 sale of any security.

- 13 (a) to employ any device, scheme, or artifice to defraud;
14 (b) to make any untrue statement of a material fact or omit to state a material fact
15 necessary in order to make the statements made, in the light of the circumstances
16 under which they were made, not misleading; or
17 (c) to engage in any act, practice, or course of business which operates or would operate
18 as a fraud or deceit upon any person.

19 II.

20
21 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her
22 agents, servants, employees and attorneys, and all persons in active concert or participation with any
23 of them who receive actual notice of this Final Judgment by personal service or otherwise are
24 permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the
25 Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, 13a-13 and 13a-14
26 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13 and 240.13a-
27 14] by knowingly providing substantial assistance to an issuer which has a class of securities
28 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the

1 Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission such accurate and complete
2 information, reports, and documents as are required to be filed with the Commission pursuant to
3 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the Commission's Rules promulgated
4 thereunder, including but not limited to, quarterly reports on Form 10-Q [17 C.F.R. § 249.308a] as
5 prescribed by Commission Rule 13a-13 [17 C.F.R. § 240.13a-13], and current reports on Form 8-K
6 [17 C.F.R. § 249.308] as prescribed by Commission Rule 13a-11 [17 C.F.R. § 240.13a-11], such
7 information and documents to contain, in addition to such information as is expressly required to be
8 included in a statement or report to the Commission, such further material information, if any, as may
9 be necessary to make the required statements, in the light of the circumstances under which they are
10 made, not misleading, as prescribed by Commission Rule 12b-20 [17 C.F.R. § 240.12b-20].

11
12 III.

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her
14 agents, servants, employees and attorneys, and all persons in active concert or participation with any
15 of them, who receive actual notice of this Final Judgment by personal service or otherwise are
16 permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of
17 the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any issuer which has a class of securities
18 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the
19 Exchange Act [15 U.S.C. § 78o] to fail to make or keep books, records or accounts, which, in
20 reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the
21 issuer.

22 IV.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Kayser and her
24 agents, servants, employees and attorneys, and all persons in active concert or participation with any
25 of them, who receive actual notice of this Final Judgment by personal service or otherwise are
26 permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(B) of
27 the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by causing any issuer which has a class of securities
28 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the

1 Exchange Act [15 U.S.C. § 78o] to fail to devise and maintain a system of internal accounting
2 controls sufficient to provide reasonable assurances that:

3 A. transactions are executed in accordance with management's general or specific
4 authorization;

5 B. transactions are recorded as necessary (i) to permit preparation of financial statements in
6 conformity with generally accepted accounting principles or any other criteria applicable to such
7 statements, and (ii) to maintain accountability for assets;

8 C. access to assets is permitted only in accordance with management's general or specific
9 authorization; and

10 D. the recorded accountability for assets is compared with the existing assets at reasonable
11 intervals and appropriate action is taken with respect to any differences.

12
13 V.

14 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her
15 agents, servants, employees, attorneys, and all persons in active concert or participation with any of
16 them, who receive actual notice of this Final Judgment by personal service or otherwise are
17 permanently enjoined and restrained from, directly or indirectly, violating Section 13(b)(5) of the
18 Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a system
19 of internal accounting controls or knowingly falsifying any book, record, or account described in
20 Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

21
22 VI.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her
24 agents, servants, employees and attorneys-in-fact, and all persons acting in concert or participation
25 with any of them, who receive actual notice of this Final Judgment by personal service or otherwise,
26 are permanently restrained and enjoined from, directly or indirectly, violating Rule 13b2-1 under the
27 Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified any book, record or
28 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment by personal service or otherwise, are permanently restrained and enjoined from violating Rule 13b2-2 of the Exchange Act [17 C.F.R. §240.13b2-2] by making or causing to be made a materially false or misleading statement, or by omitting to state or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with (A) any audit or examination of the financial statements of an issuer required to be made pursuant to the federal securities laws or (B) the preparation or filing of any document or report required to be filed with the Commission pursuant to the federal securities laws or otherwise.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and her agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] by falsely certifying annual and quarterly reports filed with the Commission under Section 13(a) of the Exchange Act.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited, for five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

X.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$35,000 pursuant to Section 21(d)(3) of the Exchange Act. Defendant shall make this payment pursuant to the terms of the payment schedule set forth in paragraph XI below after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payments shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and each payment shall be accompanied by a letter identifying Diane Kayser as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. A copy of the cover letter and payment shall be simultaneously transmitted to the attention of the District Administrator at the Commission's San Francisco District Office, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. Defendant shall pay additional post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

XI.

Diane Kayser shall pay \$35,000 in three installment payments according to the following schedule: (a) \$11,666 within ten (10) business days of the entry of the Final Judgment; (b) \$12,241.88, consisting of penalty of \$11,666 and post-judgment interest of \$575.88, within 365 days of the entry of the Final Judgment; and (c) \$12,821.55, consisting of penalty of \$11,668 and post-judgment interest of \$1,153.55, within 730 days of the entry of Final Judgment.

If Diane Kayser fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment minus any payments made, shall become due and payable immediately without further application to the Court.

XII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XIII.

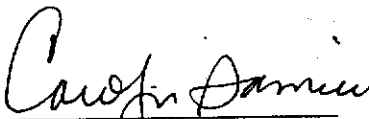
IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated this 22 day of Sept., 2006


United States District Judge

Magistrate

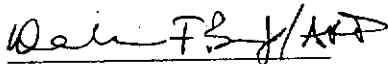
PRESENTED BY:



Helene L. Morrison
Cary S. Robnett
Patrick T. Murphy
Carolyn Samiere

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
San Francisco, California 94104
Telephone: (415) 705-2500
Fax: (415) 705-2501

APPROVED AS TO FORM:



Walter F. Brown, Esq.
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94104-5700
(415) 773-5995
Attorney for Defendant Diane Kayser

THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WILL BE SENT TO:

Helane L. Morrison morrisonh@sec.gov, uclusinw@sec.gov

Carolyn A. Samiere SamiereC@sec.gov

A courtesy copy will be sent to:

Cary S. Robnett
Securities and Exchange Commission
44 Montgomery Street
Suite 1100
San Francisco, CA 94104

Walter F. Brown, Esq.
Orricke, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94104

Counsel are responsible for providing copies of this order to co-counsel and opposing counsel who have not signed up for e-filing.

Dated: 9/22/06

/s/ JMM
Chambers of Magistrate Judge Lloyd